

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 KWIK TICKET INC.,

20-CV-1201 (FB)

4 Plaintiff,

United States Courthouse
5 Brooklyn, New York

6 - versus -

March 20, 2020
7 2:00 p.m.

LARRY SPIEWAK, et al.,

8 Defendants.

9
10 TRANSCRIPT OF CIVIL CAUSE FOR TEMPORARY RESTRAINING ORDER
11 BEFORE THE HONORABLE MARGO K. BRODIE
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES

14 Attorney for Plaintiff: MATALON PLLC
15 Florence Shamah 450 Seventh Avenue
16 33rd Floor
17 New York, New York 10123
18 BY: JOSEPH LEE MATALON, ESQ.
19 (Via teleconference)

20 Attorney for Plaintiff: GOLDBERG RIMBERG & WEG PLLC
21 Kwik Ticket Inc. 122 West 27th Street
22 New York, New York 10001
23 BY: STEVEN A. WEG, ESQ.
24 (Via teleconference)

25 Attorney for Defendants: REED SMITH LLP
26 Larry Spiewak 599 Lexington Avenue
27 and Mindy Spiewak New York, New York 10022
28 BY: SAMUEL KADOSH, ESQ.
29 JOSEPH J. TUSO, ESQ.
(Via teleconference)

1 APPEARANCES (CONTINUED)

2

3 Attorney for Defendant: HIRSCHEL LAW FIRM, PC
Malkah Jacobovits 71 South Central Avenue
Suite 103
4 Valley Stream, New York 11580
BY: DANIEL ETHAN HIRSCHEL, ESQ.
5 (Via teleconference)

6

7 Also Present: VICTOR DIDIA, ESQ.

8 Court Reporter: LINDA D. DANELECZYK, RPR, CSR, CCR
9 Phone: 718-613-2330
Fax: 718-804-2712
Email: LindaDan226@gmail.com

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12 Proceedings recorded by mechanical stenography. Transcript
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1 (In open court.)

2 THE COURT: Okay, can you call the case, please,
3 Winnie.

4 THE COURTROOM DEPUTY: Yes, Judge.

5 Civil cause for a TRO, Docket Number 20-CV-1201.

6 Counsel, please state your name for the record,
7 starting with plaintiff.

8 MR. MATALON: For the plaintiff it's Joseph Lee
9 Matalon of the Law firm Matalon PLLC. And joining me is
10 transactional counsel for Ms. Shamah, Victor Didia, D-I-D-I-A.

11 THE COURT: Thank you, counsel.

12 MR. KADOSH: Your Honor, for the Spiewak defendants
13 it's Sam Kadosh from Reed Smith.

14 Another attorney from my firm, Joseph Tuso, is
15 either on the line or is going to be joining in. He's not
16 admitted in New York, but he is going to be pro hac vice.

17 THE COURT: Okay.

18 Can you give me your last name again?

19 MR. KADOSH: Sure. My last name is Kadosh,
20 K-A-D-O-S-H.

21 THE COURT: Okay.

22 MR. KADOSH: And then I also expect on the line
23 Steven Weg, who I believe is admitted in New York, and he is
24 counsel for Kwik Ticket, which is the company that's the
25 subject of this TRO.

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1 THE COURT: Okay. And is he on the line as yet?

2 MR. KADOSH: He just got here.

3 THE COURT: Is there anyone else?

4 MR. HIRSCHEL: On behalf of defendant Malkah
5 Jacobovits, this is Daniel Hirschel, H-I-R-S-C-H-E-L.

6 THE COURT: And you are representing who again?

7 MR. HIRSCHEL: I apologize. Malkah Jacobovits.

8 THE COURT: Got it.

9 MR. WEG: Good afternoon, Your Honor. Joseph Tuso
10 from Reed Smith. I just had a little trouble getting in. All
11 circuits were busy for the first couple of attempts. I'm
12 representing, along with my colleague, Samuel Kadosh, Mindy
13 and Larry Spiewak, although I will be having to file a motion
14 for pro hac vice.

15 THE COURT: Okay, and you can do that after we're
16 done with the call.

17 I think everyone has now identified themselves, and
18 I'll ask that before you speak, please restate your name so
19 that the court reporter can have a clear record of who is
20 speaking.

21 I thank you all for appearing by phone today.

22 I have read the application, and I've also read the
23 declaration in opposition to the request for a Temporary
24 Restraining Order, so I'm going to start with plaintiff's
25 counsel in this case before me.

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1 It appears that there is an ongoing action in state
2 court, so why should I issue a TRO here where the similar
3 issues have been decided, at least temporarily, in the state
4 court action?

5 MR. MATALON: Your Honor --

6 THE COURT REPORTER: I'm sorry, who is speaking.

7 MR. MATALON: I'm sorry, this is Joseph Lee Matalon.

8 Your Honor, the two actions are very different. The
9 action in New York state court does not involve Florence
10 Shamah. Although she was initially named as a defendant, the
11 plaintiff dropped her from the case after we made a motion to
12 dismiss.

13 And if you look at the complaint in that case, they
14 are seeking only very limited relief against Isaac Shamah.
15 They are seeking a declaration that Isaac Shamah cannot
16 function as an officer of the corporation, and cannot enter
17 upon the premises of the business.

18 Even if we would concede that that's the case, what
19 we have before Your Honor is a very different case involving
20 relief that we are seeking against defendants who are not
21 parties to the action in New York in any matter, and we are
22 seeking to have restraints that undermine Florence Shamah, who
23 is also not a party in the New York state action that
24 undermine her rights as a 50 percent owner of the company.

25 So the actions have nothing to do with one another.

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1 And even if the plaintiff was to prevail in that action, it
2 would have no effect on what we are seeking here, which is to
3 protect Florence Shamah's investment an ownership in the
4 company.

5 So although the defendants are trying to claim that
6 this is all before the New York courts and it should be aired
7 out there, in fact, there's a motion to dismiss pending in the
8 New York action, and the temporary restraints against Isaac
9 Shamah have absolutely nothing to do with was the relief that
10 we are seeking here.

11 And, in fact, if there's an objection to Isaac
12 Shamah even being the agent for Florence Shamah, which I don't
13 see how anyone would have standing to complain that he would
14 be the agent of her, as opposed to directly trying to operate
15 the company, we can easily appoint a different agent. And
16 then they can absolutely be no objection or claim that there's
17 an overlap between what's happening in the state court and the
18 relief we are seeking here.

19 THE COURT: Mr. Kadosh, can you clarify for the
20 Court exactly what the state court action is?

21 MR. KADOSH: Sure.

22 Your Honor, so this is -- just to give the Court a
23 moment of background that will give some context to this
24 dispute, this is a company that's been in existence for 40
25 years. And up until really September of this year, things

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1 operated very consistently where my client, Larry Spiewak, was
2 the one who ran the company on a day-to-day basis.

3 And he had an economic partner, who is Mr. Shamah,
4 who is now deceased. And, you know, for 40 years they
5 operated, there was never any dispute.

6 He passed away. The interest in the company passed
7 to his wife, who is elderly, and we have questions about her
8 capacity, and in reality the son, Isaac, who is extremely
9 litigious, has been holding himself out as her agent or that
10 he has power of attorney.

11 We've never seen any documents to suggest that he
12 actually does have that power of attorney, but he is trying to
13 insinuate himself into the running of this business which,
14 again, has operated successfully and without dispute for 40
15 years.

16 And starting in September of this year, he made
17 demands about an increased role in the company. And initially
18 Mr. Spiewak did allow him some access, and that did not work
19 out because, you know, again, he exceed his authority, the
20 limited authority which he was given. And he continued to
21 hold himself out as being the CEO --

22 THE COURT: Slow down. Slow down. Slow down,
23 counsel, the court reporter has to keep up with you.

24 MR. KADOSH: I'm sorry, Your Honor.

25 He was holding himself out as having authority.

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1 Up until in January of this year, we initiated an
2 action against Florence Shamah and Isaac, her son, who, again,
3 is purporting to act as her agent or her attorney-in-fact,
4 saying that he couldn't be involved in any way with the
5 company, he could not purport himself to be acting on behalf
6 of the company.

7 And this was litigated on the merits three times in
8 state court, Your Honor.

9 Initially when we went to go seek the TRO, then the
10 Shamahs (inaudible) the second department, appealed the TRO.
11 The second department affirmed the entry of the court's TRO.
12 And then there was a third appearance before the trial court
13 where the trial court continued the TRO.

14 In each of these three appearances and orders, the
15 court -- the state court has affirmed this principle that
16 Isaac Shamah cannot be involved with the running of this
17 company, Kwik Ticket.

18 I think it's sophistry to say that these actions are
19 completely disconnected and have nothing to do with one
20 another, when the relief that they're seeking in this TRO is
21 to enjoin Mr. Spiewak from the day-to-day operations of the
22 company, which he's been doing for 40 years without the
23 consent of the Shamahs, right; whether that is, you know,
24 Florence Shamah acting through her agent, her purported agent,
25 her son, Isaac Shamah.

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1 I think it's just -- it's sophistry to say that they
2 have nothing to do. This is the exact mirror image. The
3 state court said Isaac can't be involved. And now they're
4 running to federal court.

5 (Inaudible.)

6 They lost three times in state court and so they are
7 now running to Your Honor and seeking an injunction mandating
8 that he be involved.

9 THE COURT: Counsel, you will admit, however, that a
10 state court injunction saying that the son can't act on behalf
11 of the company, and can't interfere in the company's business
12 has nothing to do with the mother's interest in the business
13 and what, if anything, she can do as to the business.

14 And I think that's the distinction that the
15 plaintiff is trying to make. That while they're related
16 issues, the injunction at the state court, if it is what you
17 said to the Court it is, that he can't act on behalf of the
18 company or represent himself as CEO, I think that's very
19 different than the mother, if, in fact, she owned a 50 percent
20 share in the company trying to assert whatever interest she
21 has.

22 MR. KADOSH: Your Honor, if the son is purporting to
23 act on behalf of the mother as the agent, then the effect is
24 the same. But the --

25 THE COURT: I don't think so, counsel.

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1 When you sued the son, did you sue the son in his
2 capacity as acting on behalf of his mother, or the son in his
3 own right?

4 MR. TUSO: Your Honor, this is Joseph Tuso. I'm
5 counsel for the company. Steven Weg is on this call to help
6 me better answer that. It is my understanding that it was in
7 any capacity he was reporting to act.

8 And I think it's noteworthy, we have never seen or
9 heard from Florence Shamah. Isaac Shamah and his counsel
10 have, in all instances, purported to act for Florence but
11 solely in Isaac's name.

12 And as Mr. Matalon has repeatedly said, including in
13 court on the record in state court, for all purposes, Isaac is
14 Florence and Florence is Isaac. So there is certainly no
15 difference in our mind.

16 Now, with said, Steven or, Mr. Weg, can you clarify
17 for the Court in what capacity Isaac Shamah was sued before
18 Judge Martin's case.

19 MR. WEG: Yes, this is Steven Weg.

20 Mr. Shamah -- well, Isaac Shamah, there's a lot of
21 Shamahs -- Mr. Shamah was sued in any capacity of him acting.
22 Because the only way that Mr. Shamah would have any ability or
23 interest or extension of the company is through his mother,
24 and so that's why it was brought that way.

25 In other words, Mr. Shamah is not a shareholder,

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1 he's not an officer, he's not a director, he's not an owner,
2 he's -- he was at some point an employee, but in his capacity
3 where he tried to instill himself as CEO and actually as CFO
4 of the company, the entire time he's acting under the color of
5 his mother's interest and under this -- under the power of
6 attorney claim that he claims to have for his mother. So it's
7 really an extension of his mother that Mr. Shamah is acting at
8 the same time.

9 Because he's an individual, we sued him in an
10 individual capacity, because it was actually Mr. Shamah
11 himself who was going in to the company, locking Mr. Spiewak
12 out of the conference room.

13 It was Mr. Shamah himself who was calling up banks
14 and telling what -- credit card companies and telling them to
15 send statements directly to his mother rather than to the
16 company headquarters.

17 It was Mr. Shamah himself who was calling up
18 suppliers and telling them to change the method of shipping so
19 it wouldn't come by air it would come by boat it would be too
20 late.

21 It was Mr. Shamah himself who was telling employees
22 that they should pay suppliers 2 percent less than the actual
23 bill is for an absurd reason of -- that would show strength
24 and that it proves that the company has a mind of its own
25 essentially.

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1 So it was really Mr. Shamah acting, but the way he
2 obtained that or what he claimed his authority to act was, was
3 through his mother.

4 MR. MATALON: Your Honor, may I be heard. This is
5 Joseph Matalon.

6 THE COURT: Go ahead, counsel.

7 MR. MATALON: Thank you, Your Honor.

8 I don't think you got a direct answer to your
9 question.

10 The complaint alleges that Mr. Shamah is not an
11 agent of Ms. Shamah, his mother. They claim that he therefore
12 has no authority to act.

13 And I'd like to just read the text of the TRO that's
14 in place, and it simply says that: Isaac Shamah is enjoined
15 from purporting to act on behalf of Kwik Ticket, not his
16 mother, or representing to others that he is authorized to act
17 on behalf of Kwik Ticket, and is prohibited from entering Kwik
18 Ticket's offices. So that's all that it says.

19 The defendants are trying to make the focus of this
20 Isaac Shamah. In reality it's Florence Shamah. Anyone could
21 be her agent. And, in fact, to the extent there's a
22 suggestion she doesn't have the capacity, I have met with her.
23 She is as sharp as a tack. She has all her faculties. She
24 has authorized his action. She knows everything that is going
25 on.

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1 And if to obviate these, what we think are baseless
2 objections, we would just have Florence Shamah act directly or
3 appoint a different agent, that's fine.

4 And finally in conclusion on this point, I would
5 point out that none of the parties before you today are
6 parties in the state court action.

7 The state court action is Kwik Ticket as a
8 corporation, not the Spiewaks, not any of the other individual
9 defendants, and the sole defendant is Isaac Shamah, who is not
10 a party to this case.

11 So I think Your Honor has it exactly right that
12 there's a vast distinction between Florence Shamah seeking to
13 enforce her ownership rights, and that's independent from any
14 action that Mr. Shamah can take in his individual capacity.

15 THE COURT: But even if you're right about that,
16 Mr. Matalon, here's the issue, though, based on the
17 discussion.

18 It appears that at the end of the day, the issue is
19 the running of the business. And so whether it is through the
20 mother directly, the mother through her son, or some other way
21 you want to look at it, the bottom line is you're asking me to
22 issue an injunction that would affect the very business that
23 is at issue in the state court proceedings.

24 So while I do not believe that it is barred in any
25 way by *Rooker-Fedlman*, because there is no final judgment at

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1 issue here, so *Rooker-Fedlman* would not apply, why wouldn't I
2 intervene under these circumstances from issuing any
3 injunction and requiring you to deal with that issue in the
4 state court, to the extent he is saying the mother has a right
5 to do this, even though the injunction is saying the son does
6 it?

7 MR. MATALON: Okay, so first of all, the complaint
8 which is -- which frames the issues in the state court, does
9 not put in issue who has the authority to run the company. It
10 simply says that Isaac Shamah -- there are two causes of
11 action. It's simply a declaration that Isaac Shamah doesn't
12 have authority.

13 What's before this Court is a separate action. It's
14 a RICO action. It's a breach of fiduciary duty action. There
15 are state and federal causes of action that's properly before
16 this Court.

17 And the fact that defendants brought an action
18 against Isaac Shamah and Florence Shamah, who is not a party
19 to that, seeking limited relief, that would not displace this
20 Court's jurisdiction over this action, and, you know, I
21 think -- I think it's necessary to talk about what it is we
22 are seeking here.

23 We have evidence. We have indisputable evidence of
24 an ongoing pattern of fraud, of sealing money from the
25 company, fake invoices, checks made payable to cash. And

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1 we're not talking 5 or \$10,000, we're talking huge sums of
2 money.

3 Defendants -- the defendant, Larry Spiewak, is
4 apparently taking the position that he has full control over
5 this company, even though he only owns half of it.

6 Under New York law and under the shareholder's
7 agreement, he can't take non -- he can't take material actions
8 without the consent of his co-owner. She is an owner just as
9 he is an owner.

10 And at this point, regardless of what's happening in
11 the state court and the issues that are before this Court
12 today are not before the state court, we should not be
13 required -- in essence, you would be compelling to us litigate
14 issues in state court that are not before the state court.

15 What's before the state court is a very, very
16 limited action, and ultimately the issues are going to be
17 decided by Justice Block. What we're asking -- Judge Block.

18 What we're asking for is until that motion is heard,
19 we want to make sure that critical decisions relating to the
20 company, for example, should employees be laid off during the
21 coronavirus outbreak.

22 That is not a decision, that's not a routine
23 day-to-day decision such as who we should order the paperclips
24 from, that is a decision that affects the viability of the
25 company, and that is a decision that Florence Shamah has equal

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1 authority over.

2 So if the Court were to deny the Temporary
3 Restraining Order today, then Mr. Spiewak would feel
4 privileged to do whatever he wants with the company and to
5 make these essential critical decisions relating to the
6 viability and the future of the company without consulting
7 with his co-shareholder.

8 THE COURT: Okay, I've heard your argument on that.
9 My followup question to you is: What is the irreparable harm
10 here? I don't see it.

11 You're basically saying that he's stealing money
12 from the company and running the company into the ground in
13 fact, why can't that be remedied by, if you ultimately prevail
14 in this case, money damages?

15 MR. MATALON: Okay. So irreparable injury is
16 founded in the fact when a shareholder is deprived of her
17 voice in management.

18 So, for example, the decision whether to lay off
19 employees or not, that has nothing to do with the theft from
20 the company, but that is a decision that she has equal say in.

21 Access to books and records. I can't fathom -- for
22 the life of me, I can't fathom why the defendants would oppose
23 an order that says that Florence Shamah shall have access in
24 realtime to examine the bank accounts, to examine the checks,
25 not to write checks, but access to books and records and as

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1 any other shareholder would have. I mean that is something
2 that if she's deprived of that, that can't be compensated with
3 from money damages.

4 So if the Court had an opportunity to review our
5 brief, the irreparable injury is being deprived of a person's
6 one half ability to control the company and to have a say in
7 management.

8 And the fact that she wasn't involved for many
9 years, that's simply because she trusted Mr. Spiewak. The
10 facts now show that he can't be trusted. That he has stolen
11 money from the company.

12 And mind you, there is no affidavit from him in this
13 record, and I suspect you won't see an affidavit from him in
14 this record because he is going to take the Fifth Amendment
15 with these very serious charges that are being leveled here.

16 So whether or not we get a money judgment at the end
17 of the day for the theft, at issue here is the management of
18 the company and the control of the company. And under New
19 York law, and under the shareholder's agreement, major
20 decisions cannot be made unilaterally by a 50 percent
21 shareholder, and that's not something that can be compensated
22 with by money damages at the end of the day.

23 MR. TUSO: Your Honor, this is Joseph Tuso
24 (inaudible) followup questions.

25 THE COURT: I was going to ask either you or

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1 Mr. Kadosh to reply.

2 MR. TUSO: So if I could touch on a couple of
3 things.

4 First of all, I think -- this is Joseph Tusso. I'm
5 very sorry.

6 First of all, I think Your Honor is -- I'm going to
7 take the last issue first, or go back one issue, you had a
8 question before. And I think what I have a problem with is
9 that while the current complaint in the state court action by
10 Kwik Ticket involves some limited issues on the interference
11 by Ike Shamah and/or his mother in whatever capacity he is
12 purporting to act, what Mr. Matalon has failed to disclose to
13 the Court is that the judge specifically instructed that the
14 complaint be amended to dissolve that company.

15 At bottom you now have, at best, a shareholder
16 dispute, so --

17 THE COURT: Wait a second. Step back. Mr. Tusso, go
18 back and explain that to me.

19 You're saying that the court -- the state court
20 judge has already issued an order to dissolve the company?

21 MR. TUSO: No, the court gave leave to amend, and
22 for all intents and purposes, and Mr. Weg will confirm this,
23 said go amend that complaint and add a dissolution count
24 because this relationship is over, dissolve the company, it's
25 clearly at an end.

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1 So that has not -- that amendment has not been filed
2 yet, in part because the courts are basically stuck for
3 routine matters, especially the state courts, although that is
4 coming, of course, the dissolution action, because, one, we
5 agree with Judge Martin that this relationship is over; and
6 two, because he instructed the parties to do so.

7 So the fact --

8 THE COURT REPORTER: Please slow down.

9 MR. TUSO: I have a tendency to speak quickly, I am
10 very sorry.

11 The fact that Mr. Matalon came running into federal
12 court, and I would argue improperly for lots and lots of
13 reasons, and now arguing that the complaint does not yet have
14 that dissolution count which addresses all these things, and
15 Mr. Matalon has made of all these identical arguments about
16 alleged theft which, for the record, we 100 percent vehemently
17 object. Mr. Matalon knows that those allegations are false.
18 He's admitted that to me on prior occasions.

19 THE COURT: Counsel. Counsel. Counsel.

20 MR. TUSO: That addresses the action in the state
21 court on what it will become and what it currently is, and
22 that's all of these same arguments have already been addressed
23 before Judge Martin.

24 On the irreparable harm, Judge, at least the way I
25 heard the way the question phrased, I agree with you a

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1 hundred percent. There is no irreparable harm here.

2 And the argument that Florence Shamah should see
3 bank statements? Okay, those are corporate records which
4 every shareholder is entitled to in the ordinary course. She
5 is asking this Court on an emergency basis to say, can we look
6 at a realtime, same-day bank statement. That's frankly
7 unheard of.

8 The shareholder agreement here, which she's asking
9 you to delve into, ignoring the arbitration clause, ignoring
10 the state court action presently, it has provisions on what
11 the directors will be doing. It's set forth in Section 3 very
12 clearly.

13 So this is much to do about nothing. There's no
14 irreparable harm, as the Court has observed. There's no
15 emergency here and the --

16 THE COURT: Okay, so I'm going to stop the parties.
17 After I stop -- after I made the comment that the parties
18 should not argue to each other, I was disconnected from the
19 call. So I've heard nothing since then.

20 Mr. Tuso, I need you to continue making the
21 arguments you were making to the Court from that point. I
22 apologize.

23 MR. TUSO: No problem, Judge. I think we're all
24 dealing with the technological reality of working remotely.

25 I think then where I may have gotten cut off was,

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1 and correct me if you heard this part, but I was saying that
2 the stat court action presently, because Mr. Matalon said
3 those issues aren't before the state court. The judge
4 instructed the parties to file a dissolution action. To amend
5 that complaint and file a dissolution count.

6 The fact because of largely what has occurred in the
7 last couple of weeks, that amendment hasn't taken place yet,
8 does not mean those issues aren't before the court. Those
9 very same arguments, including the allegations, the knowingly
10 false and fraudulent allegations, by Mr. Spiewak were all
11 addressed before Judge Martin.

12 He considered them. He rejected them. He said at
13 the end of the day, the good 'ole garden variety dispute
14 between shareholders and the company, the relationship is at
15 an end, and so he formally end that. File the dissolution
16 count. That will be done in due course when -- you know, when
17 the state court fog is done. So that is -- that is and will
18 be before the state court.

19 On your comments about irreparable harm, I agree
20 with the Court completely. There is no irreparable harm here.

21 Even if everything that he alleged wildly is true,
22 which it's not, you have a good 'ole garden variety
23 Mr. Spiewak can write a check and put back money that he
24 allegedly took. The argument --

25 THE COURT: Slow down. Slow down, counsel.

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1 MR. TUSO: I realized I was speeding up. I'm sorry.

2 The argument that it's irreparable if she doesn't
3 see a bank statement the same day, that's a novel argument.

4 A shareholder, a passive shareholder, in any
5 corporation certainly has entitlement under the shareholder
6 agreement and the New York general corporation law to company
7 records in the ordinary course.

8 I don't think that extends to the same day. But if
9 that's the emergency basis that he is coming here for to see a
10 bank statement the same day online, that's just a complete
11 waste of the parties and this Court's time.

12 There's no irreparable harm. There's no likelihood
13 of success on the merits. And the status quo is for the last
14 40 years has been Larry Spiewak as the president of this
15 company and operating it on a day-to-day basis.

16 The shareholder agreement that he points to lays out
17 in Section 3 the various topics, I think there's six or seven,
18 of which the board could make joint decision -- it has to be a
19 majority, three out of four has to make a decision.

20 If there's a dispute under that agreement, that
21 agreement also requires arbitration. Instead he came running
22 to federal court, knowing that the state court action, which
23 directly impact these issues, or instead of going to AAA,
24 which is mandated under that shareholder agreement, and
25 brought up these -- I want to be careful of my words --

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1 ridiculous claims of RICO count, which will be dismissed in
2 very short order, and so there is at the end of the day --
3 forget the merits, there's no basis for an injunction here and
4 to enter a Temporary Restraining Order.

5 THE COURT: I have a followup question. You
6 mentioned the status quo, and I believe there's some
7 discussion as to the fact that there are four board members.

8 Are there currently four board members?

9 THE COURT REPORTER: Who is speaking?

10 THE COURT: This is still Mr. Tuso, right?

11 MR. TUSO: Mr. Tuso, yes, T-U-S-O.

12 So there was David Shamah, the patriarch of the
13 family, who passed away about 15 years ago, and Mr. Spiewak
14 started this company, I think it was 1980, 1981, so almost 40
15 years now, and they had a very short form shareholder
16 agreement which called for each constituency to appoint two
17 directors each. And, again, they would make decisions as
18 enumerated, if any to be made, under paragraph 3 -- Section 3
19 of that document.

20 They, by all their admissions, never followed that,
21 and instead Larry was the president, David was an active
22 friend of Larry, he tried to run --

23 (Interruption.)

24 Was that a question?

25 THE COURT: There was no question. There's just a

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1 bunch of feedback.

2 MR. TUSO: I'm sorry, Judge. I'm sorry. I'm sorry.

3 So the Shamahs were half equity investors, and Larry
4 was the business guy who ran the business. And so they never
5 did. And David came in and he and Larry were close, and they
6 remained close until his death, and that's how the company
7 ran.

8 So there were not (inaudible) board members, but I
9 think as Judge Martin was very clear on, there was still a
10 deadlock, which is -- that's why it's leading to dissolution,
11 which is happening. It's happening next. So there have not
12 been, although there could equally be, a deadlock position.

13 THE COURT: Got it.

14 MR. MATALON: Your Honor, may I be heard.

15 MR. KADOSH: Hold on. This is Samuel Kadosh.

16 THE COURT: Yes, I'll hear fully from defendants,
17 and then I'll come back to you, Mr. Matalon.

18 MR. MATALON: Thank you, Judge.

19 MR. KADOSH: Your Honor, if you compare the --

20 THE COURT: And this is Mr. Kadosh, right?

21 MR. KADOSH: Yes, this is Mr. -- yes. Yes, Your
22 Honor.

23 If you compare the relief that they're seeking in
24 the TRO, it goes far beyond the major decisions that are
25 allocated to the board of directors in the shareholder

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1 agreement.

2 The relief that they're seeking here is, number one,
3 making any payments on behalf of Kwik Ticket without the
4 consent, in writing, as plaintiff Florence Shamah or her
5 agent, Isaac Shamah. And then a decision that's (inaudible)
6 running the day-to-day of the business, which was never given
7 over to the board of directors.

8 Number five -- or number two, issuing any checks
9 drawn on an account of Kwik Ticket payable to cash. Making
10 any payments in cash, except for incidental payments, less
11 than \$50. Making or implementing any decision on behalf of
12 Kwik Ticket, open paren, other than routine day-to-day
13 decisions, without the consent of Florence Shamah --

14 THE COURT: Slow down. Slow down, counsel.

15 MR. KADOSH: Without the consent of Florence Shamah
16 or her agent, Isaac Shamah.

17 Now, when you compare that, they filed the
18 shareholder agreement that I want to set aside for the moment,
19 the question of whether it's been followed for the last 40
20 years. But even if you work under the assumption that, you
21 know, the parties are still bound by it, it's document Number
22 12-2. They filed it as an exhibit to their declaration.

23 And if (inaudible) and you look at the types of
24 decisions that require a board majority, a board of director's
25 majority, in order to make (inaudible) major supervisory or

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1 executive personnel, not -- not hiring or firing any employee.
2 The change in salary or other compensation of any shareholder,
3 not the compensation of any employee. Merger with another
4 entity. That's not happening now. Leasing the office or
5 warehouse space. That's not happening now.

6 Those are just decisions that the Shamahs, even if
7 (inaudible) improperly appointed themselves to the board of
8 directors, those are the decisions that they entitled to, Your
9 Honor. They are not entitled to have a veto power over every
10 payment over \$50. That's simply not what the shareholder
11 agreement allows them, Your Honor.

12 And beyond that, there is no emergency here. This
13 dispute has been going on (inaudible) all the allegations of
14 theft of mismanagement since September of 2019. Why are they
15 waking up on March 19th, right in the middle of a national
16 crisis, suddenly deciding that they need emergency relief.

17 What has (inaudible) after they lost the fight in
18 state court, but what exactly has motivated them today or
19 yesterday to come to the court, and not in September, and I
20 think the fact that they waited since September until March
21 really casts doubts on the veracity of their claim that
22 there's some urgent crises that requires immediate court
23 invention that will radically change the way that the
24 company's been running for 40 years.

25 THE COURT: Okay. Anyone else from the defendants

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1 who would like to be heard?

2 Then, Mr. Matalon.

3 MR. MATALON: Okay, Your Honor. We have a lot of
4 territory to cover here. I'd like --

5 THE COURT: Take it slow so that the court reporter
6 can keep up with you.

7 MR. MATALON: Okay. I would like to address the
8 last point first, which is Mr. Kadosh's comment, well what
9 happening since September?

10 What happened in September is Mr. Shamah approached
11 Mr. Spiewak with the evidence of the fraud and the theft. And
12 he said we're going into court for a preliminary injunction
13 unless we agree that it's going to stop.

14 And at that time, Mr. Spiewak agreed to a
15 resolution. It's a very simple resolution, which was
16 unanimously agreed to and, in essence, it's that resolution
17 which we would like to have reinstated by the Court.

18 The resolutions by its terms expired after 30 days.
19 But then the parties continued to abide by it for three more
20 months. That resolution says: No payments of checks, unless
21 it's agreed to by both sides. It says: No payments payable
22 to cash.

23 Why would a business -- I'm not even sure why the
24 defendants object to that. Why would a business need to write
25 checks payable to cash instead of to the proper payee? It

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1 also says: You can't make payments in cash, meaning green
2 currency. It also gave access to books and records. It also
3 said that Ms. Shamah or her agent can have office space in the
4 office.

5 We are not seeking to implement the office space,
6 but we are seeking to implement all the other provisions,
7 which are very reasonable and protects the interests of a
8 50 percent shareholder, particularly when the theft has been
9 uncovered in the phony invoices, which they can deny all they
10 want, but it's documentary.

11 That narrow relief, which would be afforded any
12 50 percent shareholder is what we're seeking to have
13 implemented. So the question is, what's going to happen in
14 the next week? You know, what's the big emergency?

15 The big emergency, as I mentioned, is that there are
16 decisions to be made regarding the viability of the company.
17 Are employees going to be laid off? Is the company going to
18 shut down? Those are decisions that are -- they're not
19 routine to day to day, they're unprecedented decisions. And a
20 decision made by Mr. Spiewak regarding the company and its
21 future cannot be dealt with after the fact.

22 Now, in terms of what was before the state court, I
23 disagree vehemently that Judge Martin ordered the parties to
24 do a dissolution proceeding. He wondered out loud, during the
25 oral argument, of whether the relationship is viable and said

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1 there may need to be a dissolution proceeding.

2 He certainly didn't order one. I don't think he can
3 order a party to a dissolution proceeding. And even if there
4 were a dissolution proceeding that is a yet to come, the
5 question is protection of my client in the interim.

6 We now have an action that's validly before this
7 Court, and we're seeking injunctive relief in this action, and
8 the fact that at some point in the future the corporation or
9 Mr. Spiewak may decide to file a dissolution action has no
10 bearing on what we're doing today.

11 And by the way, the court's decision continuing the
12 TRO was back in February, before there was any coronavirus or
13 any alleged shutdown in the courts, which would have
14 prohibited the starting of a dissolution proceeding.

15 And by the way, the dissolution proceeding will not
16 deal with the same issues that we have before the Court today.

17 So regardless of the fact that over many years my
18 client wasn't involved day to day, that's because she trusted
19 Mr. Spiewak and he has breached that trust, demonstratively
20 and with documents.

21 So what's before the Court today is really what
22 should be in place until Judge Block gets to hear and decide
23 the preliminary instruction.

24 We are asking for very narrow relief. We are asking
25 that no check be paid, unless it has my client's approval. By

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1 the way, that requirement was adhered to from September until
2 January, when the ex parte TRO was obtained, eliminating my
3 client from -- Mr. Shamah from the business.

4 At that point they cut him off from the online
5 access to the information. And whether or not -- whether or
6 not the defendants think that, you know, that's something that
7 can be dealt with in the ordinary course in getting the
8 information after the fact, the reality is in terms of
9 control, and in terms of ownership, Mr. Spiewak has no
10 superior rights than my clients.

11 All we are asking is that any major decisions that
12 need to be made have to be consulted -- have to be the result
13 of a consultation with my client, and her agreement; that
14 payments have to be approved by her; and that they not write
15 checks to cash any more; and that we have online access and
16 hard copy access to books and records.

17 We're not asking for a lot. And we're asking for
18 anything that a 50 percent shareholder would be entitled to,
19 and particularly given the allegations that we have are
20 extremely appropriate here, Your Honor.

21 THE COURT: Okay.

22 MR. TUSO: Your Honor, Joseph Tuso. I understand --
23 THE COURT: Go ahead, and make your point, Mr. Tuso.

24 MR. TUSO: I think that, first of all, we are buried
25 in the weeds certainly and far beyond the scope of TRO motion

1 and arguments and really just I think beyond the reason we are
2 here.

3 However, some major misstatements were made, and I'm
4 very surprised that Mr. Matalon continues to talk about this
5 resolution when he knows full well that it is the result of a
6 fraud by his client that he was involved in.

7 He provided a draft of a resolution that asked for
8 all the things that he just listed, and we unquestionably
9 said, "No", in writing and I revised it. He came back --

10 THE COURT: Slow down. Slow down.

11 MR. TUSO: I'm sorry, Your Honor.

12 He said I'd like this one thing included. I said
13 "No," the resolution only deals with the (inaudible). He then
14 said "Okay".

15 My client, listen, he's known this family for 40 or
16 50 years. You consult him for being naive. Mr. Shamah, Isaac
17 Shamah, said, "Here, sign this. This is Joe Tuso and Joe
18 Matalon have worked it out, it's done."

19 Larry foolishly signed. And we found out it was the
20 one that I specifically and in writing said no to and
21 Mr. Matalon acknowledged that I said no to.

22 When this was raised before Judge Martin, the
23 response is not that they didn't do that, the response was,
24 for all intense and purposes, Larry was a dupe, he should have
25 called you.

1 And that's not okay to perpetrate a fraud involving,
2 you know, my -- a lawyer on this side, he's a represented
3 party, and Isaac had counsel that worked on the draft of this
4 resolution.

5 But Mr. Matalon is correct, even if it was executed
6 as a result of a fraud, it expired in 30 days. So that's
7 gone.

8 We are opposing the TRO, not specific questions of
9 it, but the totality of it, because it is an extraordinary
10 request under these circumstances. He's asking for you to
11 revise this share -- this 40-year-old shareholder agreement,
12 just to do things that it was, one, never intended to do, but
13 to claim that, in this pandemic that we have, that Larry may
14 decide as the president to hire or fire somebody, the same
15 thing that he's done solely for 40 years.

16 Hiring a warehouse worker. Hiring a secretary or
17 laying one off, for that matter, has never been a board
18 decision, it's always been a president's decision. So he's
19 asking you to change what he's done for 40 years. It's
20 frankly unprecedented.

21 And I would note that, you know, we are concerned
22 that after the injunction, the TRO in the state was granted, a
23 few hours later, his client -- which he said his client and
24 then he said Mr. Shamah -- that Mr. Shamah went and violated
25 the TRO and moved about \$17,000 from the company's account,

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1 after he had improperly gained access to it, to pay for his
2 daughter's school tuition. We called him out on that, of
3 course.

4 All this is saying, Judge, at the end of the day,
5 this is, again, at bottom, just a good 'ole fashion deadlock
6 between shareholders in a closely-held corporation. There is
7 no emergency. It is inappropriate, of course, for federal
8 court's intervention, particularly one where he's asking you
9 to enter an order that would do away with three separate
10 orders now in the state court where an action is pending.

11 I will be done now, because I don't want to keep
12 going on and on. I do think that Mr. Weg, on behalf of the
13 company, who was involved in the state court and wants to
14 comment as well.

15 THE COURT: Mr. Weg?

16 MR. WEG: Thank you, Your Honor. Steven Weg.

17 The one thing I wanted to comment on, because I
18 think it was a misstatement by Mr. Matalon who said this
19 entire issue wasn't raise in the state court.

20 Having actually argued before Judge Martin,
21 Mr. Matalon was holding a draft in the complaint for this case
22 and waiving it before Judge Martin in the state court and was
23 talking about all the allegations of theft that are being
24 raised here and the allegations of mismanagement, and I think
25 the point of that was to try to get Judge Martin to permit the

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1 relief that is being requested here.

2 So to say that this wasn't actually raised in the
3 state court is absolutely not true, because it was the basis
4 for Mr. Matalon's opposition.

5 So there's definitely a ruling, there's definitely
6 something that was already considered by the state court,
7 rejected, it's just completely inappropriate from the
8 corporate governance level to suddenly change 40 years of
9 history. It's completely from left field. It is really --

10 THE COURT: Okay. So I am going to now rule on the
11 application for a TRO.

12 First, I'm going to state for the record what the
13 standard is and what the relief is that is being sought.

14 As all parties know, a preliminary injunction is an
15 extraordinary remedy, and it's never awarded as of right. The
16 purpose is to preserve the relative positions of the parties
17 until a trial on the merits can be held. And while I'm
18 reading the standard for a preliminary injunction, as you are
19 all aware, it is the same standard for a TRO.

20 A party seeking such relief must establish
21 irreparable harm, likelihood of success on the merits, or
22 sufficiently serious questions going to the merits of his
23 claim, to make them be a grounds for litigation, plus the
24 balance of the hardship is indirectly in the favor of the
25 moving party, and that the preliminary injunction is in the

1 public's best interest.

2 However, a heightened standard is appropriate where
3 an injunction is mandatory, or the injunction will provide the
4 movant with substantially all the relief sought, and that
5 relief cannot be undone even if the defendant prevails at a
6 trial on the merits.

7 Here I find that plaintiff is asking for a mandatory
8 injunction; in effect, plaintiff is not asking me to maintain
9 the status quo but rather to change it. And by asking me to
10 alter the status quo, in effect, asking me to impose as a
11 condition that were previously imposed by the resolution,
12 plaintiff needs to meet the heightened standard.

13 Based on the record before me, I find that plaintiff
14 has not, and so I am denying the application for a TRO.

15 First, plaintiff has not shown that plaintiff would
16 be irreparable injured if, in fact, the TRO is not issued.

17 As I indicated earlier, to the extent that plaintiff
18 is challenging and arguing that defendants are, in effect,
19 stealing money from the company and is worried about the
20 manner in which the company is being run, that can all be
21 remedied at the end of this lawsuit by monetary damages. And
22 as we are all aware, irreparable harm is the single most
23 important prerequisite for the issuance of injunctive relief.

24 And because plaintiff cannot show irreparable harm,
25 plaintiff is not entitled to a TRO, and I am denying it.

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1 Judge Block has set this matter down for a
2 preliminary injunction hearing for March 31st at 2:30 p.m.

3 Is there anything else we need to discuss today?

4 MR. MATALON: Not from us, Your Honor.

5 MR. TUSO: Is that going to be electronic as well, I
6 presume, given the state of the world?

7 THE COURT: I assume so, but Judge Block will likely
8 issue an order as to how he plans to proceed. The court I
9 believe will be closed at 3. We're all working remotely. I'm
10 simply here as the emergency judge this week.

11 So I suspect that it will be electronically, but he
12 will follow up. I did confirm with him that he will hold a
13 preliminary injunction hearing on that date and at that time.

14 MR. KADOSH: Thank you, Your Honor. I just
15 messengered you (inaudible) --

16 THE COURT: No, no, no. I did not take it as such,
17 counsel.

18 Yes, I believe, Mr. Matalon, were you trying to
19 saying something to the Court?

20 MR. MATALON: Yes. Is there a briefing schedule
21 that's going to be put in place?

22 THE COURT: I'm not sure. I will notify Judge Block
23 as to today's ruling and let him know that the parties would
24 like further information.

25 To the extent the parties can agree on a briefing

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1 schedule, you should do so and simply notify the Court.

2 I'm happy to work it out with you now. Is there a
3 schedule that the parties can agree to, or are you willing to
4 rely on the papers that you submitted to the Court today?

5 MR. TUSO: I think for -- I think for Larry and
6 Mindy --

7 THE COURT: And this is Mr. Tuso or Mr. Kadosh?

8 MR. TUSO: No, it's Tuso. I'm sorry, Your Honor,
9 I'm not used to the electronic stuff. My apologies. Joe Tuso
10 for Larry and Mindy Spiewak.

11 I think that we put forth the sum and substance of
12 what we wanted to be able to address on today's call. I do
13 think, though, that we would probably like to submit a more
14 formal response, you know, with the standards and lay them out
15 and how the facts apply to law.

16 And so, Sam, are you in agreement, since you're lead
17 on this?

18 MR. KADOSH: Yes, we're definitely going to submit
19 something.

20 THE COURT: To the extent, especially since I only
21 gave the defendants a few hours to submit something yesterday.

22 How much time do you need to do so?

23 MR. KADOSH: If we have a hearing on the 31st?

24 THE COURT: Yes.

25 MR. KADOSH: Two weeks for something in by next

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1 Friday?

2 THE COURT: Hold on, let me just look at the
3 calendar.

4 Next Friday would be the 27th. That wouldn't give
5 Mr. Matalon a lot time to respond.

6 Mr. Matalon, how about if they were to serve you
7 papers on Thursday, the 25th, and that way you can have until
8 the 30th, but as early as possible on the 30th you put in a
9 reply.

10 MR. MATALON: Could we get a day earlier for them,
11 Wednesday?

12 MR. KADOSH: You know, we're operating under
13 challenging conditions trying to coordinate everything
14 remotely, and in my practice, at least, not many judges give
15 reply briefs for a PI hearing, it's usually done on two
16 briefs.

17 THE COURT: That is --

18 MR. KADOSH: You know, we -- I'm going to need I
19 think until Thursday just to gather up everything, you know,
20 work with everybody remotely. So I'd prefer to keep it at
21 Thursday. If they're allowed and they want to put in a reply,
22 a short reply, you know, could be done by Monday.

23 THE COURT: I think that's fair. And so I'll give
24 you until the 26th.

25 And then, Mr. Matalon, if you want to reply to it,

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1 do so by the 30th --

2 THE COURT REPORTER: I'm sorry, Judge, you got
3 cutoff.

4 THE COURT: And so the defendants have until the
5 25th to file a response.

6 And Mr. Matalon can respond by the 30th, Monday the
7 30th, if he chooses to do so.

8 MR. MATALON: Okay. And I just have one question.

9 There was reference to the hearing before Judge --

10 THE COURT: I'm sorry, Mr. Matalon, we lost you.
11 Hello?

12 MR. KADOSH: Yes, Judge, I think we lost him.

13 THE COURT: Let's wait a few minutes to see if he
14 dials back in.

15 (Pause.)

16 THE COURT: Mr. Matalon?

17 MR. MATALON: Yes.

18 THE COURT: Are you back with us? Okay.

19 So you were asking about the hearing itself?

20 MR. MATALON: Yes, yes, I was asking -- I was making
21 an inquiry as to whether any of the parties obtained a copy of
22 the transcript before of the argument before Judge Martin.

23 THE COURT: Oh. You can discuss that offline with
24 the parties. Are we done with this hearing?

25 MR. MATALON: Your Honor, the reason why is if they

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1 have obtained it, I would like you to order them to provide
2 it.

3 THE COURT: I'm not going to do that, counsel. You
4 need to discuss that with the parties. And if there is a
5 copy, you can work it out or you can get your own copy. But
6 it's not my place to order defendants to provide you with a
7 copy of the transcript in the state court proceedings.

8 MR. MATALON: Okay. Thank you.

9 THE COURT: Have a good day everyone.

10 We're adjourned.

11 MR. MATALON: Thank you, Your Honor.

12 MR. KADOSH: Thank you, Your Honor.

13

14 (Whereupon, the matter was concluded.)

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16 * * * *

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19 I certify that the foregoing is a correct transcript from the
20 record of proceedings in the above-entitled matter.

21

s/ Linda D. Daneleczyk

March 25, 2020

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LINDA D. DANELECZYK

DATE

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